

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN R. BAKER, JUDGE

DIVISION III

CA06-344

REBECCA McVEY

APRIL 25, 2007

APPELLANT
v.

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[JV2004-247-3]

ARKANSAS DEPARTMENT OF HUMAN
SERVICES

HONORABLE STACEY A. ZIMMERMAN,
JUDGE

APPELLEE

AFFIRMED

Appellant Rebecca McVey challenges the Washington County Circuit Court's termination of her parental rights to her two children. Appellant asserts four points on appeal: (1) The trial court erred in finding there was sufficient evidence to adjudicate appellant's children dependent-neglected; (2) The trial court erred in finding that appellant's minor children could not be returned to her because she resided out of state and there was not an approved home study completed through the Interstate Compact Act for placement of children; (3) The trial court erred in determining there was sufficient evidence to terminate the parental rights of appellant; (4) The trial court erred in determining that it was in the best interests of appellant's children to terminate the parental rights of appellant. We find no error and affirm.

In March 2004, the Arkansas Department of Human Services (DHS) took appellant's two

children, K.A. and N.W., into custody following the filing of a FINS petition. A dependency-neglect case proceeded at that point, but ultimately a Motion to Dismiss was filed for lack of jurisdiction because the children in question were not residents of the State of Arkansas at the time the State took custody; rather, they were residents of Indiana. A Petition for Dependency-Neglect was filed June 15, 2005, in response to the Motion to Dismiss, because by that time the children in fact had been in Arkansas for well over the six months required time period for Arkansas to take jurisdiction.

On June 15, 2005, a hearing was held. The children were continued in custody with an adjudication hearing set. On July 13, 2005, a hearing addressing the issues of adjudication, no reunification, and permanency planning was held. The court made a finding of dependency neglect and continued custody of the children with their current placement, with the goal for the children changed to adoption. A termination of parental rights hearing was held on September 28, 2005. Following the termination of parental rights hearing, the trial court took the case under advisement. Subsequently, the trial court entered an order terminating the parental rights of appellant.

Appellant first asserts that the trial court erred in finding there was sufficient evidence to adjudicate appellant's children dependent-neglected. Evidence before the trial court at the adjudication hearing in July 2005 was that appellant had been sentenced in Indiana to ten years of house arrest for repeated convictions of driving under the influence. Evidence also established that appellant had been arrested in Arkansas for failure to comply with the house-arrest provisions of the Indiana sentence, and, consequently, appellant had been extradited back to Indiana and was unable to care for the children. Throughout the FINS proceeding, appellant remained in Indiana despite her indication that she would move to Arkansas. At this hearing, the fact that appellant had previously been deemed unfit for custody was uncontroverted. Neither was there an evidentiary challenge to the fact that the Interstate Compact Placement of Children (ICPC) home study did not recommend placement because the

investigator did not have access to records due to the appellant's failure to sign a release allowing the counselor to make a recommendation. Given these facts, we cannot agree with appellant's assertion that there was insufficient evidence to support the trial court's finding that the children were dependent-neglected.

Secondly, appellant argues that the trial court erred in finding that appellant's minor children could not be returned to her because she resided out of state and there was not an approved home study completed through the ICPC. At trial, counsel for appellant did not contend that custody could be returned to her without an ICPC; instead, she argued that the issues regarding the ICPC home study had been addressed and sought a new one. An argument raised for the first time on appeal is not properly before the court. *See Miller v. Arkansas Dep't of Human Servs.*, 86 Ark. App. 172, 167 S.W.3d 153 (2004). Accordingly, we find no error on that point.

Thirdly, appellant asserts that the trial court erred in determining there was sufficient evidence to terminate the parental rights of appellant. Appellant contests neither the finding of a previous adjudication of dependency-neglect nor the finding that these children had been out of the home in excess of twelve months. She makes no contention that DHS failed to make reasonable efforts to rehabilitate the home. Her argument is based solely on the premise that "as of the time of the termination of parental rights hearing ...[she] was in a position to have her children returned to her." Given that the children were removed from her custody because of incarceration for driving under the influence, suggesting substance dependency, that appellant failed to sign a release to allow the investigator to determine whether appellant had sufficiently addressed dependency issues or that she possessed sufficient parenting skills, and that appellant offered no evidence from a mental health professional or substance-dependency educator or any other testimony to support her argument that at the time of the termination she was capable of parenting her children, we cannot say that the trial court

erred in its finding.

Neither can we agree with appellant's fourth allegation of error that the trial court erred in determining that it was in the best interests of appellant's children to terminate the parental rights of appellant. The only argument appellant offers to show termination of parental rights was contrary to the children's best interest is that an investigation was conducted into possible maltreatment of the children while they were in foster care, while appellant had never been accused of physically abusing her children. This investigation was conducted by the Arkansas State Police Crimes Against Children Division because the allegations concerned injury against children in foster care. The testimony of the caseworker was that the investigation had been initiated after four bruises on one child's inner thigh, appearing to be fingerprints, were noticed, and that a previous investigation was conducted when the other child suffered a bite mark. The caseworker stated that the investigation was initiated the previous year against the current foster parents, but that no other allegations had been made or concerns voiced. She also stated that she had never received any follow-up information regarding the investigation, but that appellant had made the initial allegations and taken photographs of the bruises and would have been in a position to receive the letter from the investigators. Appellant produced no photographs or additional testimony regarding the substantiation of the allegations. The trial court questioned the caseworker, soliciting details as to the severity and lack of severity of the bruises. Appellant cites no cases for the proposition that allegations of harm while in foster care are sufficient to negate a trial court's finding that it is in a child's best interest to terminate parental rights.

Accordingly, because appellant has failed to show that the trial court erred in its findings, we affirm.

GLOVER and MARSHALL, JJ., agree.

